THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO.11874 of 2006

Dated: 06-07-2006

Between:

Mrs. Fareeda Abdul Latif and another.

..... PETITIONERS

AND

The Mandal Revenue Officer,
Hyderabad, and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION NO.11874 of 2006

ORDER:

The two petitioners filed the instant writ petition seeking a writ of Mandamus directing the first respondent herein namely, the Mandal Revenue Officer, Shekpet Mandal, Hyderabad, not to interfere with their possession of the vacant land which is lying towards the northern side of their property in plot No.57/A situated at MLAs Colony, Road No.12, Extension, Banjara Hills, Hyderabad.

The petitioners claim that they are absolute owners of plot No.57/A in survey No.102/1 of Hakeempet Village, Golkonda Revenue Mandal. They allege that they purchased the said plot admeasuring 600 sq. yards under a registered sale deed bearing No.276/03 dated 25-01-2003 from

Dr. Azam and Dr. Sajeeda Tabassum. The land allegedly falls within the lay out of second respondent-society and is comprised in T.S.No.1, Ward No.8, Block No.2. The government of Andrha Pradesh allotted land to an extent of Acs.105.00 to the members of Andhra Pradesh Legislative Assembly who were allotted house sites of different extents admeasuring 300 sq. yards to 600 sq. yards and the excess land was kept at the disposal of the second respondent-society. It is further alleged that there is open land on the northern side of petitioners' land admeasuring 1200 sq. yards which remained unattended for many years as it had no access and one had to pass to the land through the petitioners' land. The petitioners allege that as there was misuse of said open land by unsocial elements they spent money for cleaning shrubs and trees so as to safe guard the northern side of their land. The petitioners also approached the second respondent-society seeking settlement of excess land in their favour expressing their willingness to purchase the land. In response thereto the second respondent-society allegedly offered the land to the petitioners at the probable rate of Rs.1,000/- per sq. yard. At that stage the first respondent came to the land and threatened the labourers of the petitioners and stopped the work of raising the boundary wall around said land. Therefore, the present writ petition is filed.

At the stage of admission itself the first respondent has filed a counter-affidavit. It is stated that the land allotted to the second respondent-society admeasuring Acs.91.20 guntas falls in T.S.No.1/p, Block 'J', Ward No.12 of Hakeempet Village and the remaining extent of Acs.8.20 guntas falls in T.S.No.3, Block 'G', Ward No.9. The title of the petitioners over plot No.57/A is admitted. It is further stated as under.

It is to be informed that the Plot No.57/A is the last plot in

the layout of the 2nd respondent society and adjacent land on the northern side is held by the Government. The petitioners are trying to encroach the open land of the Government situated on the northern side of the Plot No.57/A and as such the said illegal action is prevented by the 1st respondent by asking the petitioners not to encroach the Government land to make illegal constructions. Undisputedly the petitioners have no title to the open land on the northern side of their Plot No.57/A. The contention of the petitioners that they have been taking care of the open site of the northern side since long time by cutting the bushes to maintain it clean is incorrect and misleading. The land on the northern side of Plot No.57/A is the Government land and do not form part of the land alienated to the 2nd respondent society by the Government. Even if the petitioners have taken consent from the second respondent for alienation, the same would not confer any valid right to the petitioners to claim the Government land.

The learned counsel for the petitioners contends that the petitioners have been in the custody of vacant land on the northern side of their plot and even if they are in illegal possession they are entitled for protection under law. Their complaint is that there is a mistake of identification of land and that the land on the northern side of their plot in fact belongs to the second respondent-society, who in principal agreed to alienate the land to them.

Per contra, the learned Assistant Government Pleader for Revenue (General) submits that the petitioners are not in possession of the land and when they are trying to encroach upon the government land on the northern side of their land, the first respondent prevented by asking them not to encroach upon the land. He strenuously refutes the other allegations made by the petitioners.

The contention of the petitioners that the open land admeasuring 1200 sq. yards abutting their plot on the northern side belongs to the second respondent-society is denied by the first respondent. The learned counsel for the petitioners also disputes the contention of the first respondent that the open land on the northern side is government land. When there is dispute over the title of the land, the writ petition would not be a proper remedy. If there is any mistake regarding the identification of land, it is always open to the petitioners and the second respondent-society to go in for survey and fixing boundaries, which would certainly show the actual land which was alienated or allotted to the second respondent-society from whom the petitioners purchased, which incidentally is the last plot in the lay out of the second respondent-society. The submission of the learned counsel for the petitioners that the petitioners are in legal possession and therefore, they cannot be highhandedly dispossessed cannot be accepted. As per the first

respondent, when the petitioners are trying to encroach upon the open land on the northern side of their land they were prevented upon. Even according to the petitioners, the open land on the northern side does not form part of plot No.57/A, which was alienated by the second respondent-society in their favour. Therefore, the relief as prayed for cannot be granted. It shall, however, be open to the petitioners to approach the first respondent for proper survey and fixing the boundaries.

The writ petition, with the above observations, is accordingly dismissed. No costs.

_____

(**V.V.S.RAO, J**)

6th July, 2006
ghn